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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

DAVID ACOSTA,

Defendant and Appellant.

B205553

(Los Angeles County  
Super. Ct. No. VA096910)

APPEAL from a judgment of the Superior Court of Los Angeles County, Dewey Lawes Falcone, Judge. Affirmed.

Thien Huong Tran, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Susan D. Martynec, Supervising Deputy Attorney General, and Robert C. Schneider, Deputy Attorney General, for Plaintiff and Respondent.

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David Acosta appeals from the judgment entered following a jury trial in which he was convicted of two counts of robbery and four counts of attempted robbery, with further findings that he used a firearm and committed the offenses for the benefit of a criminal street gang. In a bifurcated bench trial, defendant was found to have sustained a prior juvenile adjudication within the meaning of the “Three Strikes” law. Defendant contends that use of the juvenile adjudication as a “strike” violated his rights under the state and federal Constitutions. We affirm.

### **BACKGROUND**

On the afternoon of October 26, 2004, defendant and some companions approached a group of six youths at a park in South Gate and asked for their gang affiliation. The youths denied any affiliation. Defendant stated that he was from “Dog Patch” and demanded that the youths empty their pockets. When one of the youths did not comply, defendant took a gun from his waistband and pointed it at the youth’s stomach. Defendant and his companions took a gold chain, cell phone, and CD player from the youths. A police gang expert presented evidence that defendant was a member of a criminal street gang and that the crime was committed for the benefit of the gang.

The defense was alibi.

At sentencing, defendant unsuccessfully objected to use of his prior juvenile adjudication under the Three Strikes law. He also moved for dismissal of the adjudication under *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497. The motion was denied. Defendant was sentenced to a total term of 25 years 4 months in state prison, which included a middle term of 6 years for robbery doubled to 12 years under the Three Strikes law.

### **DISCUSSION**

Defendant contends that because he did not have a right to a jury trial in juvenile court, use of his juvenile adjudication under the Three Strikes law violated his constitutional rights to a jury trial and to federal due process. Defendant recognizes that this contention has been rejected in several Court of Appeal decisions (see, e.g., *People v. Buchanan* (2006) 143 Cal.App.4th 139, 149; *People v. Superior Court (Andrades)* (2003)

113 Cal.App.4th 817, 830–834; *People v. Bowden* (2002) 102 Cal.App.4th 387, 390) but also notes that the issue is pending in several cases before our Supreme Court, the lead case being *People v. Nguyen* (2007) 152 Cal.App.4th 1205, review granted October 10, 2007, S154847. Based on existing case law, defendant’s contention must be rejected.

**DISPOSITION**

The judgment is affirmed.

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MALLANO, P. J.

We concur:

ROTHSCHILD, J.

TUCKER, J.\*

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\* Judge of the Orange County Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.